

Challenge by Steven C. Liedel

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Via Email: elections@michigan.gov

Board of State Canvassers
Michigan Department of State
Richard H. Austin Building
430 W. Allegan St., 1st Floor
Lansing, MI 48933
E-Mail: elections@michigan.gov

Re: Challenge to Initiative Petitions Signatures Submitted by Unlock Michigan

Dear Board Members:

I write to submit to the Board of State Canvassers (the "**Board**"), this challenge to the petitions to initiate legislation submitted by Unlock Michigan.

I am challenging each of the signatures included on petitions submitted by Unlock Michigan because the form of the Unlock Michigan petitions fail to comply with the applicable formatting requirements under the Michigan Election Law, in particular MCL 168.482a.

Signatures May Not Be Counted if Petition Content Does not Comply with Election Law

In December of 2018, the 99th Michigan Legislature enacted Public Act 608 of 2018 ("**Act 608**"), which amended the Michigan Election Law. Among other provisions, Act 608 added a new section 482a, which imposes new mandatory requirements relating to signatures that must be satisfied before a signature on a petition to initiate legislation may be counted by the Board of State Canvassers.

MCL 168.482a(4) provides:

If a petition under section 482 is circulated and the petition does not meet all of the requirements under section 482, any signature obtained on that petition is invalid and must not be counted.

This new legislative mandate creates a strict compliance standard previously not applicable. It renders past practices and precedents applicable to initiative petitions and petition signatures outdated and irrelevant. Past practice and precedent of the Board to approve petitions and signatures that substantially complied with the requirements of the Michigan Election Law, to give the benefit of the doubt to petition initiative groups, or to permit voters to decide have been superseded by this new legislatively-imposed standard. Michigan law now requires that every element of an initiative petition must comply with each requirement relating to an initiative petition under MCL 168.482, including those in MCL 168.544c referenced within MCL 168.482.

When considering the constitutionality of Act 608 in OAG, No 7,310 (May 22, 2019), the Attorney General determined that the new petition form standard imposed by MCL 168.482a(4) was constitutional:

Subsection 482a(4) acts as a general, catch-all penalty provision for a form or content violation of § 482 not covered by another more specific statute. See, e.g., MCL 168.544c. For example, if a petition circulated under § 482 failed to include the new summary of the proposal required by § 482(3) or the warning to electors required under § 482(5), § 482a(4) would require signatures on that petition sheet to be discounted. In *Stand Up for Democracy v Secretary of State*, the Michigan Supreme Court held that mandatory petition form and content requirements must be complied with, and that nonconforming petitions are not entitled to placement on the ballot. 492 Mich 588, 601–619 (2012). “Entitlement to be placed on the ballot requires a showing of actual compliance with the law.” *Id.* at 619. Subsection 482a(4) essentially implements that holding by confirming that form and content errors will result in the invalidation of signatures.

...

It is my opinion, therefore, that subsection 4 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on a petition sheet that does not comply with a mandatory form or content requirement, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

Similarly, the Department of State has advised that “if a statewide proposal petition does not comply with **all** the requirements of the Michigan Election Law, signatures submitted on the petition will be considered invalid and not counted. MCL 168.482a(4).”¹

This means that the Board is now obligated to implement the strict compliance requirements for petition formatting required by MCL 168.482a(4). If a petition does not comply with the formatting requirements in MCL 168.482, the Board of Canvassers has a statutory duty to refrain from counting any signatures on that petition.

Petition Format Compliance Standard Applied to Unlock Michigan

Under this standard, if a petition submitted by Unlock Michigan fails in any way to comply with the requirements imposed by MCL 168.482, the every signature on the petition is invalid and the Board of State Canvassers is prohibited from counting any signatures on that petition. If all petitions for the Unlock Michigan proposal include the same deficiency, the Board of State Canvassers is prohibited by MCL 168.482a(4) from counting any of the signatures submitted by Unlock Michigan.

¹ Michigan Department of State, *Sponsoring A Statewide Initiative, Referendum Or Constitutional Amendment Petition* (March 2021), p 6, available at <https://www.michigan.gov/documents/sos/Initiative_and_Referendum_Petition_Instructions_2019-20_061119_658168_7.pdf> (Emphasis added).

I have identified 16 distinct mandatory petition formatting and content requirements applicable to a petition to initiate legislation under MCL 168.482. The petitions before the Board submitted by Unlock Michigan fail to satisfy 4 of the 16 mandatory requirements.

Full Text of Proposal Does not Immediately Follow Proposal Summary on Unlock Michigan Petitions

Under MCL 168.482(3), the full text of an amendment proposed by a legislative initiative must immediately follow the summary of the proposal. The petitions submitted by Unlock Michigan do not comply with this requirement for two reasons:

- (1) the summary is followed on the petition by “If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 8, 2022.”, which is neither the text of the proposed amendment nor a statement authorized by or provided for anywhere in the Michigan Election Law; and
- (2) after the unauthorized sentence, the heading for the proposal is repeated again, as part of the text of the proposal, but the heading is (a) not printed in 14-point type as required by MCL 168.482(2), (b) a heading and not a part of the full-text of the amendment, and (c) not followed by a summary of the proposal in 12-point type as MCL 158.482(3) requires for a heading.

The Balance of the Unlock Michigan Petitions Do Not Appear in 8-Point Type

Various provisions of the Michigan Election Law establish type size requirements for elements included on an initiative petition. For example, the summary of a proposal must be printed in 12-point type.² The heading for an initiative petition must be printed in 14-point boldface type.³ Under MCL 168.482(6) and 168.544c(1), after satisfying all other applicable typeface requirements, the balance of a petition must be printed in 8-point typeface.

The Unlock Michigan petitions do not satisfy this mandate to use 8-point type. First, the campaign finance identification statement at the bottom of the Unlock Michigan petition—“Paid for with regulated funds by Unlock Michigan, 2145 Commons Parkway, Okemos, MI 48864”—appears to be printed in 10-point type, not 8-point type as mandated by MCL 168.482(6) and 168.544c(1). The text used in the identification statement appears noticeably larger than the 8-point type used above the identification statement in the text of the Certificate of Circulator. Second, the phrase “**THE PEOPLE OF THE STATE OF MICHIGAN ENACT**” is included in bold type and all capital letters on the Unlock Michigan petitions. Under MCL 168.482 and 168.544c, the only items on a petition to be printed in bold type are (1) the heading of the petition, (2) the two warning statements, and (3) the circulator direction statement. The text of a proposed amendment is required to appear in 8-point type, not 8-point boldface type.

² MCL 168.482(3).

³ MCL 168.482(2).

Petition Circulator Statement Does Not Appear at Top of Unlock Michigan Petitions

Under MCL 168.482(8), an initiative petition must clearly indicate below the statement required by MCL 168.482(7) in 12-point type that “[i]f the petition circulator does not comply with all of the requirements of this act for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.” Because the statement required by MCL 168.482(7) was found unconstitutional by the Attorney General in OAG, No 7,310 (May 22, 2019), the statement required by MCL 168.482(8) must appear at the top of an initiative petition. On the Unlock Michigan petitions, the petition circulator statement required by MCL 168.482(8) appears after and next to the heading of the petitions, and not at the top of the petitions.

Petition Summary on Unlock Michigan Petitions Uses Nonexistent Public Act Name

Under MCL 168.482(3), each petition for the initiation of legislation must include a summary in not more than 100 words of the purpose of the proposed amendment or question proposed and be printed in 12-point type. The summary included on the Unlock Michigan petitions is inaccurate and does not accurately reference the law affected by the proposed initiative, instead referencing a purported act by proper name that does not exist. The summary included on the Unlock Michigan petitions references an “Emergency Powers of Governor Act”—an act that does not exist in the Michigan Compiled Laws. The law potentially affected by the Unlock Michigan petitions is simply Public Act 302 of 1945 (often abbreviated as 1945 PA 302). It has no other title or proper name.

This usage stands in marked contrast to other public acts where the Michigan Legislature has specifically assigned a proper name. For example, “[t]his act shall be known and may be cited as the “emergency management act”.⁴ See also, “[t]his act shall be known and may be cited as the “Elliott-Larsen civil rights act”.⁵ Additionally, a search of the Michigan Compiled Laws (at <http://legislature.michigan.gov>) for the phrase “Emergency Powers of Governor Act” returns no results. Even though the phrase “emergency powers of governor” may be used in some published compilations of the Michigan Compiled Laws, under MCL 8.4b, a catchline or heading included in the Michigan Compiled Laws is not part of the law. The Unlock Michigan petitions can’t seek to repeal an Emergency Powers of Governor Act, as no such public act with that proper name in Michigan exists.

The contention here is not that the summary included on the Unlock Michigan Petitions is misleading or deceptive. Instead, it is simply inaccurate. The proposal would not amend the “Emergency Powers of Governor Act”. No law with such a name exists in Michigan. As a result, the summary does not accurately describe the purpose of the amendment proposed by Unlock Michigan and does not comply with MCL 168.482(3).

Noncompliance with Petition Formatting Requirements on Unlock Michigan Petitions Prohibits Board from Counting Any Signatures on Unlock Michigan Petitions

Given these identified deficiencies in the Unlock Michigan proposal, the Board has an obligation to implement the strict compliance standard for initiative petitions included in MCL 168.482a(4)

⁴ MCL 30.401.

⁵ MCL 37.201.

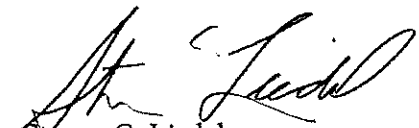
as recently added by Act 608 when counting signatures on the Unlock Michigan petitions. If a petition for the initiation of legislation is circulated and the petition does not meet all of the requirements of MCL 168.482, any signature obtained on that petition is invalid and must not be counted by the Board.

The proponents of Unlock Michigan should be well aware of these requirements and the strict compliance standard added by Act 608. Many of the proponents of the Unlock Michigan proposal were members of the Michigan Legislature in 2018 and voted to add these requirements and the new standard when Act 608 was enacted.

For the reasons stated above, I challenge all of the signatures included on the Unlock Michigan petitions. None of the Unlock Michigan petitions fully comply with the requirements of MCL 168.482. Each of petitions includes the four deficiencies noted above. Because the Unlock Michigan petitions do not comply with requirements imposed by the Michigan Legislature, the Board has a duty under MCL 168.482a(4) to find all of the signatures included on the Unlock Michigan petitions invalid and not count any of those signatures.

Thank you in advance for your consideration of this challenge.

Sincerely,



Steven C. Liedel

SCL/scli
Attachments

cc: Jonathan Brater, Director of Elections
Melissa Malerman, Bureau of Elections
Heather Meingast, Department of Attorney General